

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

JOINT APPLICATION OF YMG)	
CORPORATION AND TIDEWATER)	
ENVIRONMENTAL SERVICES, INC. FOR)	
APPROVAL OF THE SALE OF ASSETS AND)	
TRANSFER OF CPCN FROM YMG)	PSC Docket No. 12-497
CORPORATION TO TIDEWATER)	
ENVIRONMENTAL SERVICES, INC.)	
(FILED NOVEMBER 7, 2012))	

IN THE MATTER OF THE APPLICATION OF)	
TIDEWATER ENVIRONMENTAL SERVICES,)	
INC. FOR A GENERAL RATE INCREASE)	PSC Docket No. 12-498 WW
FOR WASTEWATER SERVICES FOR THE)	
CUSTOMERS OF THE PLANTATIONS)	
RESIDENTIAL COMMUNITY WASTEWATER)	
SYSTEM (FILED NOVEMBER 7, 2012))	

PROPOSED SETTLEMENT AGREEMENT

This proposed Settlement Agreement (the “Settlement”) is entered into by and among YMG Corporation (“YMG”), Tidewater Environmental Services, Inc. (“TESI” or the “Company”), the Staff of the Delaware Public Service Commission (“Staff”), and the Attorney General of the State of Delaware (“AG”) (collectively, the “Settling Parties”).

I. BACKGROUND

1. On November 7, 2012, YMG Corporation (“YMG”), a Delaware corporation and Delaware regulated public utility, and Tidewater Environmental Services, Inc., (“TESI”) a Delaware corporation and Delaware regulated public utility, filed with the Delaware Public Service Commission (“the Commission”) a Joint Application requesting the Commission to approve the transfer and assignment by YMG to TESI of substantially all of its assets and regulatory authorizations (the “YMG Assets”), including its Certificate of Public Convenience and Necessity (“CPCN”) authorizing YMG to

provide wastewater treatment services to the residents of the residential developments known as The Plantations and The Plantations East (collectively, the “Plantations”) located in Lewes, Delaware. (the “Joint Applications”) Simultaneously, TESI filed with the Commission an Application seeking approval of a general increase in wastewater service rates for the Plantations designed to produce an additional \$89,720 in annual revenues. (the “Rate Increase Application”) The Joint Application and Rate Increase Application have been consolidated pursuant to Commission Order No. 8248 dated November 29, 2012. The tariff base rates for the Plantations were approved by the Commission on October 25, 2005 by Order No. 6755 in PSC Docket No. 05-68WW. The Joint Applications were prompted by a Notice of Administrative Penalty Assessment and Order issued by the Delaware Department of Natural Resources and Environmental Control (“DNREC”) pursuant to which DNREC alleged that YMG had failed to properly maintain YMG’s wastewater treatment plant and pursuant to which DNREC proposed an administrative fee and an administrative penalty in the aggregate amount of \$233,818.00. DNREC agreed to eliminate the penalty if TESI, an experienced wastewater utility, purchased YMG’s CPCN and wastewater treatment system and made the capital improvements deemed necessary by DNREC. TESI and YMG subsequently entered into an Asset Purchase Agreement pursuant to which TESI agreed to acquire the YMG Assets and undertake the required wastewater treatment system upgrades, subject to the conditions set forth in the Asset Purchase Agreement.

2. Pursuant to 26 *Del. C.* § 306(a)(1), in Commission Order No. 8250, the Commission suspended TESI’s proposed rate increase pending the conduct of public evidentiary hearings to determine whether the proposed rate increase results in just and reasonable rates, and assigned this matter to Hearing Examiner Mark Lawrence (the “Hearing Examiner”) to conduct such evidentiary hearings. In addition, the Commission took no action on the Joint Application requesting approval of the transfer of the YMG Assets.

3. The Delaware Division of the Public Advocate (“DPA”) filed a statement of intervention in this proceeding. Subsequently, the Public Advocate resigned from office and to date, his successor has not been appointed. Accordingly, the AG was granted leave to intervene in this proceeding.

4. On December 19, 2012, the Joint Wastewater Committee of the Plantations and Plantations East communities (the “Committee”) filed a petition for leave to intervene, which the Hearing Examiner granted on January 10, 2013.

5. During the course of this proceeding, the parties have conducted substantial written discovery in the form of both informal and formal data requests, and have submitted pre-filed testimony setting forth their respective positions. A Public Comment session was held on February 21, 2013 in Lewes, Delaware. While all of the parties recommended that the Commission authorize YMG to transfer the YMG Assets, the Staff, AG, and Committee took issue with other aspects of the proposed rate increase, including its amount and timing.

6. The Settling Parties have conferred in an effort to resolve all of the issues raised in this proceeding and to avoid the substantial cost of evidentiary hearings. The Settling Parties acknowledge that they differ as to the proper resolution of many of the underlying issues in this rate proceeding and that, except as specifically addressed in this Settlement, they preserve their rights to raise those issues in future proceedings; however, for purposes of this proceeding, they believe that settlement on the terms and conditions contained herein both serve the interests of the public, TESI, and YMG, and satisfy the statutory requirement that rates be just and reasonable.

NOW, THEREFORE, the Settling Parties submit to the Hearing Examiner the following terms and conditions for resolution of the pending proceeding:

II. SETTLEMENT PROVISIONS

7. In the Joint Application, YMG and TESI requested the Commission to approve TESI's purchase of the YMG Assets . The Settling Parties agree that the proposed transfer, as set forth in the Joint Application, is for a proper purpose, consistent with the public interest, and in accordance with Delaware law. Accordingly, the Settling Parties recommend that, subject to the other conditions set forth herein, said transfer be approved by the Commission, pursuant to 26 *Del. C.* §215, and that the Commission specifically approve the transfer of YMG's CPCN to TESI without the need for YMG to abandon the CPCN and for TESI to apply for said CPCN.

8. In this proceeding, TESI advised the Commission that TESI's willingness to purchase the YMG Assets was contingent upon the Commission's approval of a rate increase that would result in additional revenues of \$89,270.00. TESI also proposed that the rate increase be placed into effect in three phases. The Settling Parties agree that the additional annual revenue to be awarded to TESI will be \$79,396.00. This Settlement stipulates that the appropriate return on equity in this proceeding is 10%. The Settling Parties have agreed to this revenue requirement award as a compromise of their positions and believe that this proposed revenue requirement award is within the bounds of the statutory requirement of a fair rate of return based on circumstances unique to TESI.

9. The Settling Parties agree that for this proceeding and for purposes of this Settlement, the rate design agreed to by the Settling Parties and set forth in the attached Exhibit A shall be the tariff rates for the TESI customers located within the Plantations and Plantations East developments. The proposed new rate shall be \$128.22 per quarter; however, such rate will not become effective until one year after TESI purchases the YMG Assets in accordance with the terms and conditions set forth in the Asset Purchase Agreement described in the Joint

Application. Prior to the implementation of the new rate, TESI shall submit to the Commission and the DPA/AG a compliance filing certifying to the Commission that TESI has completed the various improvements and repairs to the Plantations wastewater treatment system described in the Joint Application.

10. TESI shall file appropriate modifications to YMG's tariff that incorporate the stipulated revenue requirement increase and rate design within five (5) business days after TESI purchases the YMG Assets, with an effective date consistent with the terms and conditions set forth herein.

11. The Settling Parties agree that the administrative fee that TESI has agreed to pay to the Delaware Department of Natural Resources and Environmental Control ("DNREC") in the amount of \$16,000.00 has not been and will not be included in the proposed rates. The Settling Parties agree that the rate base for the Plantations wastewater treatment system will not include any of the land that is purchased by TESI from YMG that includes the bulk propane storage tanks used by others to provide community propane gas services to the residents of the Plantations communities, and that any rental income received by TESI with respect to said land shall not be included in rates.

12. The Settling Parties agree that the portion of the YMG land on which bulk propane storage tanks owned by Sharp Energy, Inc. ("Sharp") are located will not be included in TESI's rate base, nor will the revenues received by TESI from Sharp be included in TESI's revenues for ratemaking purposes. As an accommodation to the residents of "The Plantations" and "The Plantations East" (collectively the "customers") TESI agrees to issue a credit to the customers receiving wastewater services from the Acquired Assets, on a pro rata basis, equal to forty percent (40%) of the actual lease revenues received by TESI from Sharp during any period

that the rates shown on Exhibit A are in effect. By way of example, if the Sharp revenues actually received by TESI during the applicable rate year are \$15,000.00, the amount of the credit that will appear on each customer's bill will be equal to \$6,000 ($\$15,000 * 40\%$) divided by X, where X equals the total number of customers receiving wastewater services from TESI at the end of the applicable rate year from the Acquired Assets.

13. This Settlement is the product of extensive negotiation and reflects a mutual balancing of various issues and positions of the Settling Parties. This Settlement is expressly conditioned upon the Commission's approval of each of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Settlement will terminate and be of no force and effect unless the Settling Parties agree in writing to waive the application of this provision. If TESI does not purchase the YMG Assets, this Settlement will terminate and be of no force and effect.

14. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future proceeding before the Commission, except as otherwise provided for herein. None of the Settling Parties necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, any calculation made, or the resolution of any particular issue, except that the Settling Parties agree the resolution of the issues herein taken as a whole results in a just and reasonable rate and is in the public interest.

15. This Settlement pertains to PSC Docket No. 12-497 and PSC Docket No. 12-498WW. To the extent opinions or views were expressed or issues were raised in this

proceeding that are not specifically addressed in this Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred.

16. The Settling Parties agree that they will submit this Settlement for a determination that it is in the public interest and results in just and reasonable rates and that no Settling Party will oppose such a determination. Except as provided herein, this Settlement shall not have issue or claim preclusion in any pending or future proceeding, and none of the Settling Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

17. If this Settlement does not become final, either because it is not approved by the Commission or because it is the subject of a successful appeal and remand, each Settling Party reserves its respective rights to submit additional testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding.

18. This Settlement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Settlement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Settlement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

19. The Settling Parties may enforce this Settlement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Settlement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

20. If a Court grants a legal challenge to the Commission's approval of this Settlement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Settlement, or if some other legal bar has the same effect, then this Settlement is voidable upon written notice by any Settling Party to all other Settling Parties.

21. This Settlement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Settlement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert (a) if the Commission does not issue a final order approving this Settlement without modifications; or (b) in other proceedings before the Commission or any other governmental body so long as such positions do not attempt to abrogate this Settlement. This Settlement, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

22. The signatories hereto represent they have the authority to execute this Settlement on behalf of the Settling Party for whom they are signing.

23. This Settlement may be executed in counterparts, and each such counterpart shall be as valid as if all signatures appeared on the same page.

NOW, THEREFORE, intending to legally bind themselves and their successors and assigns, the undersigned Settling Parties have caused this Settlement to be signed by their duly-authorized representatives.

[SIGNATURE PAGE TO FOLLOW]

**TIDEWATER ENVIRONMENTAL
SERVICES, INC.**

Date: _____

By: _____
(Print Name) A. Bruce O'Connor
(Title) Treasurer

YMG CORPORATION

Date: _____

By: _____
(Print Name) _____
(Title) _____

**DELAWARE PUBLIC SERVICE
COMMISSION STAFF**

Date: _____

By: _____
(Print Name) _____
(Title) _____

**OFFICE OF THE ATTORNEY GENERAL
FOR THE STATE OF DELAWARE**

Date: _____

By: _____
(Print Name) _____
(Title) _____

EXHIBIT A

TARIFF RATES PER SETTLEMENT AGREEMENT